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PERKINS COIE LLP P.O. BOX 1208 SEATTLE, WA 98111-1208			EXAMINER MISIASZEK, MICHAEL	
			ART UNIT 3625	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/733,830	Applicant(s) HEINS, DOUGLAS B.	
	Examiner Michael Misiaszek	Art Unit 3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-16,19-27 and 29-95 is/are pending in the application.
- 4a) Of the above claim(s) 29-73 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-16,19-27 and 74-95 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant's amendments filed 9/5/2008 have been received and reviewed. The status of the claims is as follows:

Claims 1, 4-16, 19-27, and 29-95 are pending. Claims 29-73 were previously withdrawn from consideration by the applicant.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- 1. Claims 84-86, 88, and 89 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement.**

The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Each of these claims recite an RDFOWL or RDF/OWL instance. Neither of those terms is present in the original specification.

Appropriate correction is required.

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The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 24-27, 75, 84, 95 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding Claims 24, 25

The claims recite the limitation "the plurality of system components". There is insufficient antecedent basis for this limitation in the claims.

Regarding Claims 26, 27

The claims recite the limitation "the one system component". There is insufficient antecedent basis for this limitation in the claims.

Regarding Claims 75, 84

It is unclear how the provisioner can identify over developed or under developed photographs, prior to any photographs being developed. Put another way, the digital images that are being processed by the provisioner are merely digital data, and are not yet developed photographs, and cannot therefore be over or under developed. For purposes of examination, identifying over and under developed digital photographs, as claimed, will be considered to mean identifying erroneous (out of focus or over/under exposed) images. Appropriate correction is required for clarity.

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Regarding Claim 95

The claim recites that an aspect "is manifested as an RDF/DAML instance".

While the original specification includes the recitation of an "RDF/DAML instance", it provides no explanation as to what an RDF/DAML instance is. Accordingly, the inclusion of such a phrase renders the claim particularly unclear. Appropriate correction is required to clarify the claim.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 1, 4-16, 19-27, and 74-95 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Based on Supreme Court precedent and recent Federal Circuit decisions, the Office's guidance to examiners is that a § 101 process must (1) be tied to a particular machine or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. In re Bilski et al, 88 USPQ 2d 1385 CAFC (2008); Diamond v. Diehr, 450 U.S. 175, 184 (1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876).

An example of a method claim that would not qualify as a statutory process would be a claim that recited purely mental steps. Thus, to qualify as a § 101 statutory process, the claim should positively recite the other statutory class (the thing or product) to which it is tied, for example by identifying the apparatus that accomplishes the method steps, or positively recite the subject matter that is being transformed, for example by identifying the material that is being changed to a different state.

Here, applicant's method steps fail the first prong of the new Federal Circuit decision since they are not tied to a machine and can be performed without the use of a particular machine. Thus, claims 1, 4-16, 19-27, 74-95 are non-statutory since they may be performed within the human mind.

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The Examiner notes that the first limitation of each of claims 1, 84, 87, and 95 recites “identifying a user using a computing unit.” Such an identifying step is considered to merely be insignificant extra-solution activity, and further, “a computing unit” is not considered to be a particular machine. Accordingly, the limitation does not satisfy the first prong of the new Federal Circuit decision.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 4-16, 19-21, 23-25, 74, 80-83, 87, and 90-94 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reifel et al. (US 7013288 B1, hereinafter Reifel) in view of Baum (US 20020065741 A1) and Rosen.

Regarding Claims 1, 87

Reifel discloses a method of a digital image processing and fulfillment request comprising:

- identifying a user using a computing unit (at least column 17, lines 59-67)
- acquiring a digital image captured by a digital imaging device (at least column 17, lines 59-67)
- generating a provisioner comprising a set of settings for the identified user based on a profile aspect, a personalization aspect, and a customization aspect of the identified user (at least figure 2, box 208: billing information, mailing address, printing preferences, etc.)
- said profile aspect includes billing information (at least figure 2, box 208: billing information)

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- said personalization aspect includes a set of predetermined user-selected image processing settings for modification of the digital image(at least figure 2, box 208: printing preferences)
- said customization aspect includes a set of instance-specific settings that govern fulfillment of the digital image (at least figure 2, box 208: mailing address)

Reifel does not explicitly disclose:

- automatically performing a single-event instantiation process said single-event instantiation process including associating the provisioner with a processing and fulfillment request
- wherein the single-event instantiation process is automatically performed in response to verification of the user and acquiring the digital image,
- wherein the single-event instantiation of the processing and fulfillment request further generates a preview of the processing and fulfillment to verify availability of the set of settings of the provisioner.

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Baum teaches that it is known to include automatically performing a single-event instantiation process including associating a provisioner with a processing and fulfillment request (at least paragraph 111: user clicks icon to automatically order with default options) wherein the process is automatically performed in response to verification of the user and acquiring the digital image (at least paragraph 111: user has existing account and selects digital image) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method, as taught by Reifel, with the single-event instantiation process, as taught by Baum, since such a modification would have only united elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

Rosen teaches that it is known to include a preview of the workflow options of an order (at least figure 11B: user can go back to change options if desired) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Reifel, with the workflow preview, as taught by Rosen, since such a modification would have provided a means to allow consumers to easily and conveniently purchase merchandise personalized to their own tastes (at least paragraph [0004] of Rosen). Further, the cited references are analogous art and the combination recited only unites elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

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Regarding Claims 4, 5

Reifel discloses:

- wherein the identifying the user comprises receiving a submission of one or more of a user identification involves entry of user id and password in the single-event instantiation process (at least figure 7A)
- wherein the identifying the user comprises receiving a submission of one or more of a user identification involves an email address and password in the single-event instantiation process (at least figure 7A)

Regarding Claims 6-9

While Reifel discloses various methods of identifying a user, Reifel does not explicitly disclose that the specific methods set forth in claims 6-9. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Reifel to have identified using any technique because such would have been an obvious matter of design choice in light of the method already disclosed by Reifel. Such modification would not have otherwise affected the method of Reifel and would have merely represented one of numerous steps that the skilled artisan would have found obvious for the purposes already disclosed by Reifel. Additionally, applicant has not persuasively demonstrated the criticality of identifying the user with the various techniques set forth by the claimed invention versus the manner in which Reifel discloses identifying a user.

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Regarding Claims 10-14

Reifel discloses:

- wherein the acquiring the digital image acquisition of digital images is made performed via a direct cable link to the digital imaging device (at least column 15, lines 36-50)
- wherein the acquiring the digital acquisition of digital images is made performed via a wireless link to the digital imaging device (at least column 15, lines 36-50)
- wherein the acquiring the digital image uses a digital media memory card reader (at least column 3, lines 33-36)
- wherein the digital imaging device is a digital still camera device (at least column 3, lines 33-36)
- wherein the digital imaging device is a digital video camera device. (at least column 3, lines 33-36)

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Regarding Claims 15, 16

While Reifel discloses various digital imaging devices, as detailed above, Reifel does not explicitly disclose that the specific devices set forth in claims 15 and 16. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Reifel to have any type of digital imaging device because such would have been an obvious matter of design choice in light of the method already disclosed by Reifel. Such modification would not have otherwise affected the method of Reifel and would have merely represented one of numerous steps that the skilled artisan would have found obvious for the purposes already disclosed by Reifel. Additionally, applicant has not persuasively demonstrated the criticality of using the specific digital imaging devices set forth by the claimed invention versus the digital imaging devices which Reifel discloses.

Art Unit: 3625

Regarding Claim 19

Reifel disclose the claimed invention except for:

- wherein the preview of the entire processing and fulfillment permits the user to fine-tune choices and options prior to completion of fulfillment,

Rosen teaches that it is known to include a preview that permits a users to fine-tune choices and options (at least figure 11B: user can go back to change options if desired) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Reifel, with the workflow preview, as taught by Rosen, since such a modification would have provided a means to allow consumers to easily and conveniently purchase merchandise personalized to their own tastes (at least paragraph [0004] of Rosen). Further, the cited references are analogous art and the combination recited only unites elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

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Regarding Claims 20, 21, 23-25, 90-94

Reifel discloses:

- wherein the processing and fulfillment request is sent to a plurality of system components operable to process the request, wherein, the plurality of system components communicate via a Wide Area Network (at least figure 1)
- wherein the plurality of system components communicate via a secure connection utilizing encryption for at least a portion of the processing and fulfillment request (at least column 7, line 52-column 8, line 2)
- wherein the plurality of system components serve multiple purposes in performing one or more tasks of the processing and fulfillment request (at least column 3, lines 18-32)
- wherein one system component of the plurality of system components is a server offering one or more different processing and fulfillment behaviors (at least column 3, lines 18-32)
- wherein the plurality of system components process multiple single-event instantiations of the processing and fulfillment request each mutually independent from each other (at least column 3, lines 18-32)

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Regarding Claim 74

Reifel discloses the claimed invention except for:

- wherein, the personalization aspect comprises, one or more settings for image enhancement of the digital image.

Rosen teaches that it is known to include settings for image enhancement of the digital image (at least paragraph 7) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Reifel, with the image enhancements, as taught by Rosen, since such a modification would have provided a means to allow consumers to easily and conveniently purchase merchandise personalized to their own tastes (at least paragraph [0004] of Rosen). Further, the cited references are analogous art and the combination recited only unites elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

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Regarding Claims 80, 81

Reifel discloses:

- wherein, the customization aspect comprises, a setting to select a physical hardcopy fulfillment, a vendor for hardcopy fulfillment, or a physical pickup of hardcopy fulfillment (at least column 16, line 66-column 17, lines 16)
- wherein, the customization aspect further comprises, a setting to select one or more non-physical means of receiving the fulfillment (at least column 16, line 66-column 17, lines 16)

Regarding Claims 82, 83

Reifel discloses the claimed invention except for:

- fulfilling said processing and fulfillment request to complete processing and fulfillment of the single-event instantiation.
- wherein, the processing and fulfillment request is completed without using a software application, a web online service, or a traditional shopping cart ordering model.

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Baum teaches that it is known to include completing processing and fulfillment of the single-event instantiation without using a software application, a web online service, or a traditional shopping cart ordering model (at least paragraph [0060]: physical delivery of prints) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method, as taught by Reifel, with the completion and fulfillment of the single-event instantiation process, as taught by Baum, since such a modification would have only united elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

Art Unit: 3625

5. Claims 75-77, 84 rejected under 35 U.S.C. 103(a) as being unpatentable over Reifel in view of Baum and Rosen as applied above, and further in view of Urabe et al. (US 7363235 B2, hereinafter Urabe).

Regarding Claim 75

Reifel, Baum, and Rosen disclose the claimed invention except for:

- wherein, the personalization aspect further comprises, one or more settings for identifying over developed or under developed digital photographs

Urabe teaches that it is known to identify erroneous digital images (at least column 11, line 53 – column 12, line 4: identifying out of focus images) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method, as taught by Reifel, Baum and Rosen, with identifying, as taught by Urabe, since such a modification would have only united elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

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Regarding Claims 76, 77

Reifel, Baum, and Rosen disclose:

- wherein, the personalization aspect further comprises, one or more settings for selecting layout of the digital photographs (at least Reifel figure 8)
- wherein, the personalization aspect further comprises, a setting for selecting one or more fulfillment formats of the digital photographs (at least Reifel figure 8: 3x5, 4x6, T-shirt, etc.)

While Reifel discloses various fulfillment formats, as detailed above, Reifel does not explicitly disclose that the specific formats set forth in claim 77. However, it would have been obvious to one of ordinary skill in the art at the time of the invention to have modified Reifel to have any type of fulfillment format because such would have been an obvious matter of design choice in light of the method already disclosed by Reifel. Such modification would not have otherwise affected the method of Reifel and would have merely represented one of numerous steps that the skilled artisan would have found obvious for the purposes already disclosed by Reifel. Additionally, applicant has not persuasively demonstrated the criticality of using the specific fulfillment formats set forth by the claimed invention versus the fulfillment formats which Reifel discloses.

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Regarding Claim 84

Reifel, Baum, and Rosen disclose a method comprising:

- identifying a user using a computing unit (at least column 17, lines 59-67 of Reifel)
- acquiring a digital image captured by a digital imaging device (at least column 17, lines 59-67 of Reifel)
- generating a provisioner comprising a set of settings for the identified user based on a profile aspect, a personalization aspect, and a customization aspect of the identified user (at least figure 2, box 208 of Reifel: billing information, mailing address, printing preferences, etc.)
- said personalization aspect includes a set of predetermined user-selected image processing settings for modification of the digital image(at least figure 2, box 208 of Reifel: printing preferences)
- said customization aspect includes a set of instance-specific settings that govern fulfillment of the digital image (at least figure 2, box 208 of Reifel: mailing address)
- automatically performing a single-event instantiation process said single-event instantiation process including associating the provisioner with a processing and fulfillment request (at least paragraph 111 of Baum)
- wherein the single-event instantiation process is automatically performed in response to verification of the user and acquiring the digital image (at least paragraph 111 of Baum)

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Reifel, Baum, and Rosen disclose the claimed invention except for:

- wherein, the personalization aspect further comprises, one or more settings for identifying over developed or under developed digital photographs

Urabe teaches that it is known to identify erroneous digital images (at least column 11, line 53 – column 12, line 4: identifying out of focus images) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time of the invention to have modified the method, as taught by Reifel, Baum and Rosen, with identifying, as taught by Urabe, since such a modification would have only united elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

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6. Claims 78, 79, and 95 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reifel in view of Baum, Rosen and Urabe as applied above, and further in view of Reed.

Regarding Claim 78

Reifel, Baum, and Rosen disclose the claimed invention except for:

- wherein, the personalization aspect further comprises, a setting to select one or more preferred means of notification of fulfillment, the one or more preferred means comprising, voice, text, mobile device, PDA, email, and web-service.

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Reed teaches that it is known to include a preferred means of notification (at least paragraph [0136]: user's preference for notification) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Reifel, baum, and Rosen, with the notification preference, as taught by Reed, since such a modification would have provided increased control for a consumer in a transaction system through personalized preferences (at least paragraph [0210] of Reed). Further, the cited references are analogous art and the combination recited only unites elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

Regarding Claim 79

Reifel discloses wherein, the personalization aspect, further comprises, a set of adaptable settings defined by user behavior (at least column 13, lines 37-45)

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Regarding Claim 95

Reifel, Baum, and Rosen disclose a method comprising:

- identifying a user using a computing unit (at least column 17, lines 59-67 of Reifel)
- acquiring a digital image captured by a digital imaging device (at least column 17, lines 59-67 of Reifel)
- generating a provisioner comprising a set of settings for the identified user based on a personalization aspect, and a customization aspect of the identified user (at least figure 2, box 208 of Reifel: billing information, mailing address, printing preferences, etc.)
- said personalization aspect includes a set of predetermined user-selected image processing settings for modification of the digital image(at least figure 2, box 208 of Reifel: printing preferences)
- said personalization aspect includes a set of adaptable settings defined by user behavior (at least column 13, lines 37-45 of Reifel)
- automatically performing a single-event instantiation process said single-event instantiation process including associating the provisioner with a processing and fulfillment request (at least paragraph 111 of Baum)
- said customization aspect includes a set of instance-specific settings that govern fulfillment of the digital image (at least figure 2, box 208 of Reifel: mailing address)

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- wherein, the processing and fulfillment request is sent to a plurality of system components operable to process the request, wherein, plurality of system components communicate via a network (at least figure 1 of Reifel)
- wherein the single-event instantiation process is automatically performed in response to verification of the user and acquiring the digital image (at least paragraph 111 of Baum)

Reifel, Baum, and Rosen disclose the claimed invention except for:

- wherein, the personalization aspect further comprises, a setting to select one or more preferred means of notification of fulfillment, the one or more preferred means comprising, voice, text, mobile device, PDA, email, and web-service.

Art Unit: 3625

Reed teaches that it is known to include a preferred means of notification (at least paragraph [0136]: user's preference for notification) in a similar environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method, as taught by Reifel, baum, and Rosen, with the notification preference, as taught by Reed, since such a modification would have provided increased control for a consumer in a transaction system through personalized preferences (at least paragraph [0210] of Reed). Further, the cited references are analogous art and the combination recited only unites elements of the cited references as detailed above, with no change in their respective functions and which yield predictable results.

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Response to Arguments

Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Misiaszek whose telephone number is (571)272-6961. The examiner can normally be reached on 9:00 AM - 5:30 PM, Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571) 272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jeffrey A. Smith/
Supervisory Patent Examiner, Art
Unit 3625

Michael A. Misiaszek
Patent Examiner
12/21/2008